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COUNSEL FOR DEFENDANT SECRETARY OF STATE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

MARK WANDERING MEDICINE,)	Case No. CV 12-135-BLG
HUGH CLUB FOOT, LENARD)	
ELK SHOULDER, CHARLES)	
BEAR COMES OUT, WINFIELD)	
RUSSELL, JAMES DAY CHILD,)	DEFENDANT
WOODROW BRIEN, SARAH)	SECRETARY OF STATE'S
STRAY CALF, MARTY OTHER)	RESPONSE IN OPPOSITION
BULL, NEWLYN LITTLE OWL,)	TO PLAINTIFFS'
DONOVAN ARCHAMBAULT, ED)	MOTION FOR PRELIMINARY
MOORE, PATTY QUISNO,)	INJUNCTION
MICHAEL D. FOX, FRANK)	
JEFFERSON and PHYLLIS POND)	
CULBERTSON,)	
Plaintiffs,)	
v.)	
)	
LINDA MCCULLOCH in her)	
official capacity as MONTANA)	
SECRETARY OF STATE,)	
GERALDINE CUSTER, in her)	
official capacity of ROSEBUD)	
COUNTY CLERK AND)	
RECORDER, ROSEBUD COUNTY,)	

ROBERT E. LEE, DOUGLAS D.)
MARTENS, and DANIEL M.)
SIOUX, in their official capacity as)
members of the County Board of)
Commissioners for Rosebud County,)
Montana, SANDRA L.)
BOARDMAN, in her official)
capacity of BLAINE COUNTY)
CLERK AND RECORDER,)
BLAINE COUNTY, CHARLIE)
KULBECK, M. DELORES)
PLUMMAGE and FRANK)
DEPRIEST in their official capacity)
as members of the County Board of)
Commissioners for Blaine County,)
Montana, DULCE BEAR DON'T)
WALK, in her official capacity of)
BIG HORN COUNTY ELECTION)
ADMINISTRATOR, BIG HORN)
COUNTY, SIDNEY FITZPATRICK,)
JR., CHAD FENNER, JOHN)
PRETTY ON TOP, in their official)
capacity as members of the County)
Board of Commissioners for Big)
Horn County, Montana, and)
KIMBERLY YARLOTT, in her)
official capacity of BIG HORN)
COUNTY CLERK AND)
RECORDER, BIG HORN COUNTY,)
)
Defendants.)

INTRODUCTION

Plaintiffs, pursuant to Fed. R. Civ. P. 65(a), have asked this Court for a “preliminary injunction directing Defendants to open a satellite clerk and recorder’s office in Lame Deer, Ft. Belknap Agency and Crow Agency, to be open

for in person late registration and in person absentee voting during dates and times consistent with other locations in Montana....” Plaintiffs’ Motion for Preliminary Injunction, p. 2. Defendant Secretary of State opposes this Motion as the Secretary of State is not authorized to open county clerk and recorder’s offices. Defendant Secretary of State incorporates by reference her Motion to Dismiss and her Brief in Support of Motion to Dismiss, filed October 24th, 2012, and re-alleges the defenses contained therein.

LEGAL STANDARD

Plaintiffs correctly cite the applicable standard for the granting of a preliminary injunction. Plaintiffs must show (1) Plaintiffs are likely to succeed on the merits, (2) Plaintiffs are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in Plaintiffs’ favor, and (4) an injunction is in the public interest. *Alliance for Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1135 (9th Cir. 2011) (citations omitted).

ARGUMENT

Plaintiffs are unlikely to succeed on the merits as the relief requested is outside of the scope of the duties of the Secretary of State. As discussed in the Secretary of State’s Brief in Support of her Motion to Dismiss, the Secretary of State does not have any constitutional or statutory authority to grant Plaintiffs the

injunctive relief they seek as the Secretary of State can neither open nor prevent the opening of satellite offices.

Plaintiffs' Motion does not cite any authority for the Secretary of State to open said offices. Whether under the Voting Rights Act, the 14th Amendment or the Montana Constitution, Plaintiffs are not likely to succeed on the merits against Defendant Secretary of State.

Turning to each of the claims presented by the Plaintiffs, it is readily apparent that the relief they seek cannot be provided by the Secretary of State. Speaking to their Voting Rights Act claim, Plaintiffs state "The dates and location of polling places are a 'standard, practice, or procedure with respect to voting' under Section 2 of the Voting Rights Act." Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, p. 20, and, "Unless the Court issues an order compelling Defendants to provide Plaintiffs with satellite offices for in-person absentee voting and late registration...." *Id.* at p. 23. As detailed in Secretary of State's Brief in Support of Motion to Dismiss, the decision to open satellite clerk and recorder offices does not belong to the Secretary of State but to the County with the approval of the county commissioners.

Plaintiffs' 14th Amendment Claim against the Secretary of State is also unlikely to succeed on the merits. Plaintiffs "claim that lack of in-person absentee voting and late registration on the Fort Belknap, Crow and Northern Cheyenne

Indian Reservations violates the Equal Protection Clause of the 14th Amendment.”

Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction, p. 27.

As detailed in Secretary of State’s Brief in Support of Motion to Dismiss, the

Secretary of State did not prohibit the opening of satellite offices. More

importantly, Plaintiffs cannot show a likelihood that the alleged injury will be

redressed by a favorable decision. “The election administrator is responsible for

the administration of all procedures relating to registration of electors and conduct

of elections.” Mont. Code Ann. § 13-1-301(2). “Thus declaratory or injunctive

relief against the [Secretary of State] cannot achieve the desired goal of having [a

satellite office] to correct the alleged unconstitutional conduct.” *Eggar v. City of*

Livingston, 40 F.3d 312, 317 (9th Cir. 1994). Secretary of State’s Brief in Support

of Motion to Dismiss, p. 12.

The State Constitution claim against Defendant Secretary of State is also unlikely to succeed. The duties of the Secretary of State can generally be found in Article VI, § 4(3), Mont. Const., Mont. Code Ann. § 2-15-401, and Title 13, Mont. Code Ann. Plaintiffs do not allege any failure of the Secretary of State to meet those constitutional and statutory duties. The Secretary of State does not have any constitutional or statutory authority to open a satellite clerk and recorder office.

CONCLUSION

For the reasons stated above, Defendant Secretary of State respectfully requests that the Court deny Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted this 24th day of October, 2012.

/s/ Jorge Quintana

Attorney for Defendant Linda McCulloch
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2012, a true and accurate copy of the foregoing Defendant Secretary of State's Response in Opposition to Plaintiffs' Motion for Preliminary Injunction was served on the following persons by the following means:

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